



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 28, 2004

Ms. Mary Winston
Public Information Officer
Texas Savings and Loan Department
2601 North Lamar, Suite 201
Austin, Texas 78705

OR2004-3472

Dear Ms. Winston:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 200355.

The Texas Savings and Loan Department (the "department") received a request for "copies of any applications or other documents completed by [three named individuals] in connection with their loan officer licenses. . . ." You indicate that some responsive information has been released to the requestor. You claim that some of the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes. Section 58.001 of the Occupations Code provides as follows:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing

¹Some of the information submitted to this office that you seek to withhold was redacted prior to its submission to this office. While it is entirely appropriate that you have marked the specific information that you assert is excepted from disclosure - see Gov't Code § 552.301(e)(2) - we advise that in the future, such marked information should be visible to this office so that this office may properly determine whether the specific information at issue is, in fact, subject to the claimed exception.

agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 58.001. You state that the submitted information “contains the social security numbers of individuals licensed by the [d]epartment.” Accordingly, we find that the licensees’ social security numbers are confidential under section 58.001 of the Occupations Code and thus must be withheld from disclosure under section 552.101 of the Government Code.

We also note that the submitted records contain fingerprint information. Section 552.101 also encompasses sections 560.001, 560.002, and 560.003 of the Government Code, which govern fingerprint information and provide:

Sec. 560.001. DEFINITIONS. In this chapter

- (1) “Biometric identifier” means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) “Governmental body” has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

- (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
 - (A) the individual consents to the disclosure;
 - (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or
 - (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and
- (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Gov't Code §§ 560.001-.003. Thus, pursuant to section 552.101 and section 560.003, the department must withhold the fingerprint information we have marked, unless section 560.002 permits its disclosure.

The submitted information also contains an e-mail address obtained from the public. Section 552.137 of the Government Code makes certain e-mail addresses confidential, and provides as follows:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the members of the public with whom the e-mail addresses are associated have affirmatively consented to their release. Section 552.137 does not apply to a government employee's work e-mail address or a business's general e-mail address or web address. We find that the e-mail address contained in the submitted records is excepted from disclosure under section 552.137(a). Accordingly, we conclude that, unless consent to release has been granted, the department must withhold this e-mail address pursuant to section 552.137(a) of the Government Code.

Lastly, we note that certain submitted information is excepted under section 552.130 of the Government Code. Section 552.130 prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state, or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. The department must withhold the portions of the submitted information that relate to Texas license or motor vehicle information under section 552.130.

In summary, the licensees' social security numbers are confidential under section 58.001 of the Occupations Code and must be withheld from disclosure under section 552.101 of the Government Code. Pursuant to section 552.101 and section 560.003 of the Government Code, the department must withhold the fingerprint information we have marked, unless section 560.002 permits its disclosure. The e-mail address contained in the submitted records is excepted from disclosure under section 552.137(a), and must be withheld unless consent to release has been granted. License or motor vehicle record information issued by a Texas agency must be withheld in accordance with section 552.130. The rest of the submitted information must be released to the requestor.

Finally, you request that this office issue a "previous determination" that would permit the department in the future to withhold from disclosure financial information and social security numbers of department licensees without the need of requesting a ruling from us about whether such information can be withheld from disclosure. We decline to issue such a previous determination at this time.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Nettles", written over a horizontal line.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 200355
Enc. Submitted documents

c: Mr. LaMont W. Rodgers
U.S. Department of Homeland Security
United States Secret Service
602 Sawyer Street, Suite 500
Houston, Texas 77007-7510
(w/o enclosures)